

**California Commission on  
Health and Safety and Workers' Compensation**

**MINUTES OF MEETING**

Meeting Day and Date: Monday, September 16, 1996

Meeting Location: State Building  
107 South Broadway  
First Floor Auditorium, Room 1138  
Los Angeles, California

Commission Members Present:

Chairman Tom Rankin  
Commissioner Robert H. Alvarado  
Commissioner James J. Hlawek  
Commissioner Leonard McLeod  
Commissioner Gerald O'Hara  
Commissioner Robert B. Steinberg  
Commissioner Gregory Vach

Commission Members Absent:

Commissioner Kristen Schwenkmeyer

Commission staff:

Christine Baker, Executive Officer of the Commission

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**Welcome**

The meeting was called to order at 10:00 am by Chairman Tom Rankin.

**Adoption of Minutes**

Chairman Rankin asked for a motion regarding the minutes of the Commission meeting on May 23, 1996, which had been submitted for approval by Christine Baker. Commissioner Alvarado moved that the minutes be adopted, Commissioner Hlawek seconded the motion, and the motion passed unanimously.

**Report on the Industrial Medical Council**

Chairman Rankin called upon IMC Executive Medical Director Allan MacKenzie to speak about Industrial Medical Council activities. The Commission had requested that Dr. MacKenzie discuss the status of protocols and medical treatment guidelines, the Official Medical Fee Schedule, and the Medical-Legal Fee Schedule.

Dr. MacKenzie prefaced his remarks by saying that the Industrial Medical Council has made significant progress in all relevant areas. The IMC's major thrust this year has been guidelines and fee schedules.

*IMC Mission Statement*

Dr. MacKenzie presented the mission statement of the IMC:

The Industrial Medical Council is the medical unit within the Department of Industrial Relations. It acts in coordination with other state agencies and the Administrative Director of the Division of Workers' Compensation to set medical policy and establish guidelines on treatment and evaluation for injured workers in California. The Council also regulates standards for physicians, such as the Qualified Medical Evaluation program, and advises the Administrative Director with the respect to issues impacting the Workers' Compensation systems. The IMC's goal is quality care for the injured worker at reasonable cost.

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*Qualified Medical Evaluators*

Dr. MacKenzie said that the IMC is first and foremost a regulatory body whose function it is to educate, examine, certify and then regulate a corps of Qualified Medical Evaluators. From June 1994 through March 1996 the IMC has very carefully examined 6,650 medical evaluators of whom 5,800 (87%) successfully passed. In the same time interval, 114 licensed acupuncturists were examined, of whom 67 (59%) passed. The IMC now oversees, monitors and audits the continuing medical education courses for this group. In spite of the difficult medical economic environment that we are now in, Dr. MacKenzie said that the IMC is managing to hold its QME force steady at approximately 4,600 Qualified Medical Examiners.

Dr. MacKenzie then directed his remarks to the quality of the QME reports. The Industrial Medical Council's QME Reports Survey has established a pipe line to look at reports selected randomly and at those kicked out by the DWC's Disability Evaluation Unit as needing constructive criticism. The IMC staff has completed an audit of several hundred reports and then generated appropriate letters to those physicians informing them of its findings. The goal of this study is to decrease the incidence of mediocre reports.

The QME Reports Survey found that 10% of the reports had no errors or shortcomings. The most frequent error was "failure to report face to face time spent with the injured worker". The next shortcoming was "failure to make the appropriate declarations or attestations as to the county where the declaration was signed". There were also failures to include the statutes, such as those with respect to self-referral. There is a very low incidence of serious problems such as "Bait and Switch", that is switching offices on a panel generated report. These were referred to our complaint tracking crew. There have been several reports of unacceptable quality which demanded redress, and this has been done. The IMC will look at another sampling and Dr. MacKenzie will make a report to the Administrative Director by January 1, 1997.

Dr. MacKenzie said that to date the IMC has not completed any fraud prosecutions. However, he was pleased to report that the IMC managed to get a first class Senior Special Investigator on board in May of this year and that several prosecutions are imminent.

Dr. MacKenzie indicated that he has been told by many that the medical evaluators, whom the IMC regulates, are not its "customers". Nevertheless, he believes that this point of view will reflect in better morale for the QMEs and in quality care for injured workers. Previously, QMEs stated that they only heard from the IMC at fee time when its hand was out. The IMC publishes a periodic letter entitled "Medically

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Speaking" that has met with resounding success and positive response from the QME community. Other elements of the Workers' Compensation community are being asked to be put on the mailing list, such as WCAB Judges.

The IMC has also undertaken a QME questionnaire customer satisfaction survey. The pilot study consisted of 250 questionnaires from the north and an equal number from the south. The IMC has received an excellent response so far and will report a preliminary assessment in the next "Medically Speaking", the third issue of their QME letter. This assessment is preliminary because the IMC plans to solicit 1,000 responses.

*IMC Guidelines*

Dr. MacKenzie first addressed the status of the Med/Legal Evaluation, or forensic, guidelines. The Neuromusculo-skeletal low back disability guidelines were approved by the IMC, sent to the Office of Administrative Law and in April 1996 became effective as regulation. The psychiatric protocols were approved in July 1992, and the Cardiac Disability, Pulmonary Disability, and Immunologic Testing guidelines were approved in March 1994.

Dr. MacKenzie reported on a new development which happened this year - the Continuous Quality Improvement (CQI) initiative. The council unanimously insisted that all of these guidelines have CQI header that states: "This is a living document - An opportunity for continuous quality improvement and will be reviewed as frequently as is necessary and reasonable". Accordingly, Dr. John Ng is doing a top down review of the Cardiac Disability guidelines some 2 1/2 years after they were originally promulgated.

*Treatment Guidelines*

Dr. MacKenzie explained that the purpose of the treatment guidelines is to standardize the examination of injured workers. He believes that these guidelines were written for probably 5-10% of the physician examiner community and that the other 90-95% have and will continue to do a good job of examining injured workers with or without guidelines.

Two guidelines for the treatment of Occupational Asthma and Contact Dermatitis have been effective as regulations since October of 1995.

The guidelines for treatment of low back problems, injury to the neck, injury to the shoulder, elbow, wrist, hip, and knee, are currently in the rule making process.

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This last July the IMC voted on the final wording for the treatment guidelines for the Post Traumatic Stress Disorder. These also are ready to be sent to the Office of Administrative Law once the Council resolves whether the treatment guidelines should be Advisory Regulation and whether any additional language is needed to clarify the limited purposes and indications for these guidelines.

Dr. MacKenzie stated that with regard to the controversial low back treatment guidelines, the Council Treatment Protocols Committee will be meeting on October the 8th to review the recommendations from the evidence and consensus panels and to make final decisions on changing the text of the low back guidelines. He expects a revised draft to be voted on later during the October meeting of the whole Council. That version must then be sent out for a final public 15 day written comment period. The IMC expects to adopt the final version of the low back treatment guidelines in November, and forward them to the OAL for adoption as regulation in December.

*Fee Schedules*

This spring DWC Administrative Director Casey L. Young directed the IMC to develop and maintain the Official Medical and the Medical/Legal fee schedules.

Accordingly, Dr. MacKenzie reported that the IMC is facilitating the work of two different Advisory Committees which are meeting approximately every 3 weeks to develop recommendations for amendments to the official medical and medical legal fee schedule. These committees have set a goal of completing their work by January 1997. Once approved by the Council, they will be submitted to the Administrative Director who will complete rule making by April 1997 and promulgate new fee schedules.

Dr. MacKenzie stated that this is exciting work and he invited the Commission to attend at least one meeting to better appreciate the chemistry, the accommodation and the spirit of agreement which is going on amongst the different elements of the workers' compensation community.

*Questions and Answers*

Commissioner Vach noted that there may be differences between the low back treatment guidelines to be issued by the IMC and existing proprietary utilization guidelines and asked Dr. MacKenzie what the process would be to resolve conflicts.

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Dr. MacKenzie responded that the "easy answer" is that is really up to the DWC Administrative Director, who writes the quality assurance review document.

Dr. MacKenzie went on to say that, having foreseen this situation, the California Medical Association and the California Neurosurgeons' Association came forth with a manifesto, consisting of seven statements. The manifesto was developed at a meeting of attorneys representing several different organizations within the workers' compensation community. They hammered out and almost ratified an agreement -- they could agree on all but one of the seven elements of the manifesto. Dr. MacKenzie believes that, with this manifesto and its expected ratification, significant progress has already been made towards a workable document.

Dr. MacKenzie said that whether the Industrial Medical Council's guidelines or the individual companies' guidelines will have preeminence is still to be determined. If the IMC guidelines went to the rule making and were generally accepted by the workers' compensation community, theoretically they would have preeminence.

Commissioner Vach remarked that he sees lots of room for litigation over this issue. Dr. MacKenzie agreed. He further said that he is a refugee from poorly written guidelines and that these IMC guidelines would be golden in Canada. But in California they are obviously going to meet some resistance. Dr. MacKenzie explained that these guidelines are the result of a consensus-building process -- proposed guidelines which were strictly scientifically and medically-based met incredible opposition last time around two years ago .

Commissioner Vach stated that he understood Dr. MacKenzie's perspective entirely, but stressed the need for coordination. Dr. MacKenzie concurred and observed that nobody in the Western or any world that he was aware of has gone to the expense and extent of input from the community as has the state of California.

Commissioner McLeod asked Dr. MacKenzie if the IMC offered any training courses to treating physicians. Dr. MacKenzie responded that the answer is currently no, but that the IMC is planning a core curriculum.

Commissioner McLeod then asked Dr. MacKenzie about where the idea for the IMC's fraud investigator originated - from DWC or from the IMC.

Dr. MacKenzie responded that when he first took office, it was immediately pointed out to him that in the 4 years that the IMC existed, it had yet to prosecute the first fraud case. This was the imperative to find someone who could undertake this and that was accomplished in May of this year. IMC now has the material and has obtained the subpoena powers to get some prosecution on the rails. Dr. MacKenzie stressed that this is extremely important that the community know that the ranks

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are being flushed of the fraudulent colleagues; it's a demand from DIR Director Aubry down to the providers in the field and the IMC is working on this.

Commissioner McLeod asked if the IMC were working with the Insurance Commissioner's Office on this. Dr. MacKenzie replied in the affirmative and pointed out that a lot of the fraud is administrative and is in DWC's domain. However, he said that the IMC was on top of the medical fraud situation.

Commissioner Vach said he had asked Dr. MacKenzie to come prepared to talk a little bit about a document prepared for the IMC a couple of years ago by Dr. Harber, called "The Medical Causation Analysis - Suggested Guidelines for California Workers' Compensation". Commissioner Vach asked Dr. MacKenzie if he could tell a bit about the history of this and why it has been dormant or not accepted by the IMC.

Dr. MacKenzie responded that this was before his tenure, but when he looked at the paper trail, he determined that this study was not strictly mandated to be done. The Council wanted a study which would simplify and perhaps develop a formula for the determination of causation of injury in the workers' compensation arena. It was contracted out to one Phil Harber at UCLA, who undertook the study, completed it, presented it to the Council, and published it in the Journal of Occupational Medicine. The Council accepted and ratified the study and it has sat on the shelf. It has not been widely used because it is a theoretical construct in the realm of logic rather than something that is going to help determine factors of causation in a particular workers' compensation situation.

Commissioner Vach observed that from the point of view of the claims administrator and both the applicant and defense sides, there is a need for medical reports which indicate why the physician has reached an opinion as to causation. He suggested that Dr. MacKenzie go back to the Council and discuss ways of getting more rigor into those reports, specifically those dealing with causation because they are usually the ones that are the most problematic and see if there is a way to put a little science back into those opinions. Dr. MacKenzie replied that he will do so.

Chairman Rankin thanked Dr. MacKenzie and called upon DWC Administrative Director Casey L. Young.

### **Report on the Division of Workers' Compensation**

Mr. Young said he was asked to bring the Commission up to date on four specific items - the Peat Marwick study, the DWC Information Systems Project, Carve Outs,

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and Judicial Ethics. He announced that he wanted to add one additional item - the Permanent Disability Rating Schedule.

But first he wanted to respond to Commissioner Vach's queries to Dr. MacKenzie on the utilization review standards.

*Utilization Review Standards*

Mr. Young said that Commissioner Vach put his finger on a real problem that DWC has recognized from the start. He said that DWC delayed adopting its utilization review regulations for quite some time hopefully waiting for the IMC to put together these standards. His interpretation of what was contemplated in statute is that DWC is supposed to adopt some procedural provisions about how utilization review is done and IMC is supposed to adopt the gold standards, the standards that are used. While the statute does not say that specifically, Mr. Young believes that's probably a reasonable construction, and it would avoid the kind of things that Commissioner Vach was talking about.

Mr. Young went on to say that it became clear that it was just going to take too long so he went ahead and adopted the current utilization review regulations with a much more generic provision. These regulations basically say that the standards that you use have to be adopted, have to be promulgated or developed by doctors and be peer reviewed and meet certain minimum standards and as long as you were using those, that was okay. When the IMC finishes their work on the standards, DWC will revisit that issue.

*Permanent Disability Rating Schedule*

Mr. Young then moved on to the Permanent Disability Rating Schedule which is one of the joint responsibilities of the DWC and the Commission.<sup>1</sup>

Mr. Young said that the last time he attended a Commission meeting and talked about the PDRS he had expressed concern about going forward and perhaps creating two tracks unnecessarily and confusing things. Since then, the Commission has

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<sup>1</sup> California Labor Code Section 4660(d) states: "On or before January 1, 1995, the administrative director shall review and revise the schedule for the determination of the percentage of permanent disabilities. The revision shall include, but not be limited to, an updating of the standard disability ratings and occupations to reflect the current labor market. However, no change in standard disability ratings shall be adopted without the approval of the Commission on Health and Safety and Workers' Compensation. A proposed revision shall be submitted to the commission on or before July 1, 1994."



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contracted for the RAND study. He said he has a lot of hope that the study is going to result in some recommendations that will significantly improve the schedule and perhaps even create a totally new type of schedule. Whatever conclusion RAND reaches, Mr. Young believes that they are clear on what the problems are with the current system.

In the meantime, Mr. Young reported that he put together a small group to go through what the DWC PDRS Revision committee had done line by line. The group included representatives from the applicant's attorneys, from the claims community, from Third Party Administrators, and the DEU supervisor and manager. The group decided to go to public hearing with everything but the upper extremity guidelines. Mr. Young said that the upper extremity guidelines was the most controversial and to go forward with it would have created a lot of consternation. He said the feeling was that the other PDRS provisions, such as the change in occupations, are very helpful and nobody had a problem with them.

The proposed revision to the PDRS also contains expanded instructions and guide to promote better understanding of the conceptual framework, how it's to be used, and hopefully reduce confusion Mr. Young noted.

Commissioner Vach pointed out that both the existing disability rating system and the proposed revision leave us with situations where injured workers with very similar occupations and slightly different ages can come out with substantially different permanent disability awards. He wanted the Commission to understand that part of what happens in the permanent disability rating area is that people with the same theoretical injury/impairment can come out with PD benefits with substantially different dollar values and that situation is not addressed.

Mr. Young replied by saying as the Commission knows, the statute required DWC to do age and occupation variance and does not require DWC specifically to address that problem. He said that maybe RAND will come up with a different way.

Chairman Rankin asked what was controversial about the upper extremity guidelines and Mr. Young replied that the controversy is over money.

Mr. Young went on to say that he thinks there's a real misperception as to what it is that was proposed. What concerns him most about this incident is the apparent lack of understanding on the part of many people about what the permanent disability system is and how it works. He noted that this was not meant as criticism of anything other than the permanent disability system.

Commissioner Steinberg said he was a little concerned about this piecemeal approach to the PDRS changes. He recalled when the Commission considered

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whether or not it should undertake a broad study of the PD system, he certainly got the impression that it was Mr. Young's intention to hold off on changes.

Mr. Young replied that Commissioner Steinberg's recollection was correct. He said that he has been anxious for quite some time about this and does not like being a couple of years late on a Legislative mandate. He thought that at least DWC could do half of it by updating the occupations and a few other little things that make life easier for people.

Commissioner Steinberg wanted to clarify the role of the Commission on approving the proposed changes to the PDRS. As he understood, it was Mr. Young's position that the Commission did not have a role if there were no change to the standard disability ratings. Mr. Young replied that he believed that there is one standard rating that has changed regarding the eye. Commissioner Steinberg noted that such change had not been submitted to the Commission. Mr. Young responded that the Commission needs to approve that before it becomes effective, but that he was not sure if the change in standard disability rating for the eyes ended up in the final proposal or not.

Mr. Young went on to say that he and the Commission should discuss the reaction of the workers' compensation community after the hearings on the these proposed changes to the PDRS.

Commissioner Alvarado referred to Mr. Young's statement that the controversy in the proposed PDRS change came down to money and expressed concern that only the non-controversial parts would ever be addressed.

Commissioner Vach said that he suspected that Mr. Young is going to hear something from the community about the cost of implementing this and that would be the argument for putting the whole thing off, till the RAND study comes out. That could be a decision to put the whole thing off probably for at least two years. Mr. Young replied that we've gone 50 years without a change, what's another two?

*KPMG Peat Marwick Study*

Mr. Young referred next to the KPMG Peat Marwick study of DWC and said he wanted to give the Commission a sense of how that came about, what it was and where DWC will go from here.

Over year ago DWC decided that they needed to focus efforts and attention and do what organizations should be doing on a regular basis, to start a strategic planning

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process. The managers put together a vision statement, mission statement, guiding principles, and some strategic goals.

Three basic strategic goals were identified. The first is to improve customer service. The second is to reduce the workload by reducing the number of disputes coming in the door. The third is to make the best use of human resources with computer technology.

DWC contracted with KPMG Peat Marwick to take a look at its business process in the claims resolution area, including adjudication, Vocational Rehabilitation, Disability Evaluation, and Information and Assistance, and make recommendations on reengineering and reorganization. Peat Marwick came in and utilized primarily a focus group methodology to understand DWC's business processes, how DWC operates, and to get some idea of the frustrations that people have doing their job and what it is that prevents them from doing it in the most efficient and effective manner.

Peat Marwick issued the Business Process Reengineering Report and in a separate document developed some functional requirements for new integrated computer systems that would enable DWC to do the kinds of things suggested in that report.

The report suggests that DWC should have an integrated computer system, basically a computer file of each claim, which should indicate anything that is happening to that claim in Claims adjudication, Rehab, Disability Evaluation, any I&A contacts. So if a call comes in, DWC staff can bring up that claim file and give information out about it. DWC could have a dedicated unit providing that kind of service.

The second Business Process that KPMG saw being duplicated in the various units is file creation and maintenance. KPMG is suggesting that DWC have a more centralized mail operation. It would be a more centralized managed process where all the mail come in, opened, and indexed on the computer.

The third suggestion was for a better calendaring system -- not of just personnel, but of the court rooms, the facilities, reporters, and so forth. KPMG also suggests that the Vocational Rehabilitation Conferences be part of that process and maybe part of that Claim Adjudication Process where they would be supervised by the Presiding Judge.

With respect to organization, Peat Marwick is suggesting that at the local level there would basically be dual supervision. The Presiding Judge would supervise the Judges, the Secretaries, Court Reporters, and the Vocational Rehabilitation Consultants. Everybody else, including I&A, DEU, Clerks office, the people that open the mail and so forth would be under an Administrative Officer. Mr. Young

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said that DWC should have some organizational changes at the local level but he is not sure what they are yet. DWC is going to be working through that internally.

DWC is now putting together implementation teams to talk through and think through each of these recommendations. Mr. Young said that some of the recommendations look like things that DWC ought to be able to do fairly quickly and ought to do in any case. Other things may have to wait until DWC gets a better computer system or gets the current system working in a better way.

Mr. Young said that through the process he has learned a lot with working with outside consultants. He felt very strongly that DWC needed somebody from the outside, somebody who has done some reengineering with other organizations outside the State to come in to take a look at their processes. DWC also wanted a good hard look at its computer system. He observed that the people who work on a computer system get attached to what they have and what they are used to, so they are not likely to recommend a lot of changes if it's going to erase their knowledge, even though it might benefit the organization. On the other hand, he believes it is clearly unfair in this time period to expect KPMG staff to learn the organization as well as he really wished they would have before they came out with the recommendation.

Commissioner Steinberg said that he was not sure that he understood what DWC is going to do with this report. Mr. Young replied that DWC will create implementation teams as suggested. DWC will take the recommendations from the Business Process Reengineering Report and make a plan for those things which make sense to do. For some recommendations, it would be better to wait until DWC gets their new computer system.

Commissioner Steinberg asked Mr. Young if he were going to be discussing any of these changes with the Commission before implementation. Mr. Young responded that he would like to do so.

Commissioner Steinberg asked Mr. Young for an estimate of the ratio between Information & Assistance personnel and Judicial Officers. Mr. Young said there are about one hundred in I&A (50 I&A Officers) and about six or seven hundred in Claims Adjudication (about 165 Judges).

Commissioner Steinberg asked Mr. Young if he has made any judgment yet as to what parts of that report will be implemented. Mr. Young responded that he has not and said that he thinks that there is a lot of anxiety about what DWC will do with this report. He said that Peat Marwick did not fully understand the DWC operation and that DWC has some work to do still.

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Commissioner Vach asked Mr. Young if DWC considered telling Peat Marwick to start their study from a blank sheet of paper rather than taking into account the current regulatory parameters. Mr. Young said that he believed that it could not be done in the time frame given. Furthermore, he was not sure that KPMG had the capability to do that, to really understand how the system works, what statutory provisions would need to be changed and so forth. Mr. Young said they were really looking at more generic kinds of business practices and processes that DWC and everyone else does -- open mail, schedule things, provide the information to the public. DWC thought that Peat Marwick would be able to bring some expertise to these generic kinds of things that lots of organizations do and make recommendations how they can be done better.

Commissioner Vach asked if it were really effective to do these things in fact when part of DWC's problems are caused by legislative mandates and three track systems. Mr. Young replied that he went to the last part of this legislative session and got frustrated with the possibilities of doing something up in the Legislature. He thinks that the parties have to want to make those changes and maybe this Commission would be a good place to sponsor those kinds of discussions.

Commissioner Vach noted that Mr. Young had the opportunity to say if there were things that are causing him problems or if there are some things he wants the Commission to take back to the Legislature or the Governor.

*Carve Outs*

Mr. Young explained that the Carve Out is the program that authorizes unions and the employers in the construction industry to get authorization from DWC to enter into an agreement whereby they can do several things in workers' compensation under a collective bargaining agreement that are different from what is in statute. One of them is to have a different dispute resolution process at the initial level. They can have a process that does not include Workers' Compensation Referees, but any appeals have to go to the WCAB. They can have exclusive panels of Doctors to evaluate or treat and exclusive panels of Vocational Rehabilitation providers.

Mr. Young announced that DWC was a little late issuing the Carve Out report for 1995 and that he was hoping to have more information about this program and its effects. He believes that future reports will be better in that regard.

During 1995, Mr. Young reported that there were six active carve out plans covering 242 employers, 6,885,000 hours of labor, and \$157,600,000 in wages. These covered employees submitted 543 claims and incurred losses were about \$3,600,000.

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Mr. Young said there are three basic types of participants in carve out agreements. There are project agreements where you have all the employees on a particular project covered, the dam project for example. There are some single employer/single union agreements. Then there are some multi-employer agreements.

He said that DWC tried to do in the report is calculate what the expected losses would be for these people in these classifications, and compare them to what the actual were. DWC determined that the actual were about 59% of what you would expect from the standard loss cost from the Rating Bureau. He said that doesn't tell one very much but that the Carve Out program it looks promising.

Mr. Young said that all but one of the agreements have an alternative dispute resolution process, typically starting with an ombudsperson, who tries to take care of anything before it becomes a dispute and tries to take care of the worker through the process. Of the 543 claims or so, only one went beyond that ombudsperson to mediation and got resolved there. Nobody went to that next step, which is typically an arbitrator, or further on to the WCAB. So it does appear that the expectations that there would be a lot less litigation over this may well be true. Mr. Young pointed out that these are early findings. These are claims that were made in 1995, and the ones that would have been resolved by the end of that year are the easy claims. So who the results may differ on such claims over the next year.

Commissioner Steinberg asked Mr. Young if he were aware of any Constitutional challenges that have been initiated. Mr. Young replied that he was surprised and found it interesting that no one has gone to the courts to challenge the program.

*Judicial Ethics*

Mr. Young reported that there was not a lot new with regard to judicial ethics. After hearings, DWC developed some regulations to enforce the Code of Judicial Conduct. DWC has made appointments to an Ethics Advisory Committee which has now met a couple of times. Their basic rule is to take a look at the complaints about Workers' Compensation Referees, and make recommendations to DWC on whether it ought to do further investigation of this or whether it ought to dismiss the complaint.

To date, fourteen formal complaints have been filed against Workers' Compensation Referees and Committee reviewed ten of these complaints at the June meeting. Mr. Young said he decided to take no action on eight of them, and will investigate two of them. In addition, DWC is issuing Advisory opinions to its staff about what their obligations are in various circumstances that come up, and DWC has encouraged staff to ask for with advice and counsel before they get into

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trouble. DWC also has a form out there now that people can use to contact the Ethics Advisory Committee directly with any concerns that they have.

Commissioner Vach asked if this Ethics Review Committee allowed to review performance issues as well as ethics. Mr. Young replied that the Committee can review anything under the area that they want and if somebody is not being diligent and so forth, that is an ethical issue.

*Information Systems*

Mr. Young stated that there was nothing new to report on the development of DWC Information Systems right now. He said that DWC has worked very closely with the Steering Committee that was created a year or so ago to come up with the benchmarks the system should be able to provide.

He said DWC has a plan for how certain types of data would come to the agency -- through electronic data interchange or by conducting surveys of workers, employers and within his own agency. This has been put together into a feasibility study report submitted to the control agencies for review and approval. He hopes that by the next Steering Committee meeting in November DWC will have heard from them and that it can plan from there on out.

Mr. Young went on to say that he was a little frustrated with the time line Peat Marwick finally came up with. It's a three part phase-in so DWC won't have the complete system together until the next century. He thinks it is a reasonable time line given what DWC has heard from Claims Administrators who will be providing some of the data.

In response to a question from Commissioner Vach, Mr. Young stated that DWC would have control over the data.

Commissioner Vach expressed the opinion that data should be in the control of a neutral source and asked if that concern would be addressed. Mr. Young responded that the WCIRB had similar concerns but that the statute gives DWC the responsibility of developing and maintaining the system, and that cannot be delegated somebody else. Mr. Young said he may use the Teale Data Center, the WCIRB, or some other place to house the data as DWC's contractor, but a transfer of the control of the data would require a change in statute. He stated that the Steering Committee would continue to assist and advise them, but DWC can't delegate responsibility for making decisions to another entity.

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*Questions and Answers*

Chairman Rankin asked Mr. Young what was happening with the DWC audit situation since the Commission's funding depends upon those monies. Mr. Young replied that he was not prepared to discuss the specific amounts collected, but that the Commission should feel comfortable.

Ed Woodward, President of the California Workers' Compensation Institute, asked Mr. Young if he were looking to outsource the Uninsured Employers Fund (UEF) program. Mr. Young responded that DWC was in the process of looking at that right now. As part of the Governor's Competitive Government initiative, DWC has looked at all of the parts of its agency with an eye towards seeing what might be better outsourced and that one comes clearly to the top of the list, it is very different from the other kinds of things that we do. And clearly there are others that do those kinds of things. It is definitely on the front burner.

Commissioner O'Hara asked Mr. Young if he knew the amount of workers' compensation benefits that workers do not receive because their employers are illegally uninsured. Commissioner O'Hara said that the amounts paid to those workers from the UEF has grown from \$10,000 to \$21 million a year, but he was concerned with the amount that the workers do not receive.

Mr. Young replied that he was not sure how to go about getting a figure for the amount of compensation due employees that is not paid because their employer was uninsured. He said he would think about it, because people who are in that position can certainly go through the DWC system and get an award.

Commissioner O'Hara said that he wants to get some data on that situation and asked Mr. Young if he saw a way that the Commission could be helpful in that area, whether it is a study or whatever it is, in order to accomplish it. Commissioner O'Hara pointed out that there are a lot of injured workers' who are not being compensated because the employer is not insured and not a whole lot are being compensated by the state.

Mr. Young responded that one way is to reduce the incidence of unlawful uninsurance. To the extent that is done, more people will be compensated through the regular system rather than through the UEF. The Commission might want to conduct some kind of study, or take a look at other jurisdictions and how they operate in this area. The Commission could possibly look at the WCIRB data base and the EDD data base and determine those who are paying wages but don't have an insurance policy.



## **Executive Officer Report on Commission Projects**

After a five minute break, Chairman Rankin called upon Executive Officer Christine Baker to give her report on Commission projects and other activities.

### ***1995-96 Annual Report***

Ms. Baker stated that a draft of the Commission's 1995-96 Annual Report has been completed and distributed to the Commission members and asked them to advise her if they had any further comments on the draft. She said as soon as the report is approved by a vote of the Commission, the staff will have the report printed and submitted to the Governor and Legislature, and make copies available to the public.

Commissioner O'Hara moved to approve the Annual Report, Commissioner Hlawek seconded, and the motion passed unanimously.

Commissioner Vach commented that the 1995-96 Annual Report was a definite improvement over the 1994-95 report since it contained more recommendations. He said it was obvious that the Commission has matured and he particularly wanted to thank Christine Baker for all the work that she has put in to it. He believes that next year the Commission would have some recommendations for Legislative action.

### ***Budget Change Proposal***

Ms. Baker reported that she submitted a Budget Change Proposal for fiscal year 1997-98 that would provide the Commission with one additional clerical position, one additional analyst position, and a permanent annual appropriation of an additional \$200,000 for contracted studies. This does not mean that the Commission will spend the additional \$200,000 -- it merely provides the Commission with the spending authority should it wish to exercise that option.

### ***Permanent Disability Study***

At the last meeting the Commission voted to award the Permanent Disability Study contract to RAND, which achieved the highest score in the State's competitive Request for Proposals process.

The study will evaluate how workers' compensation permanent disability benefits are currently determined and delivered in the California workers' compensation

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system. It will examine the extent to which the current system meets the goals and objectives set forth in the constitutional mandate and whether the system can be improved to better meet those goals. The study is being conducted over the course of a year -- a report is expected by mid-1997.

The Industrial Medical Council joined with the Commission in this effort and is contributing toward the cost of the study.

A Permanent Disability Study Advisory Committee, comprised of representatives from the workers' compensation community, was formed and its first meeting was held at RAND in Santa Monica on Tuesday, July 23, 1996. The meeting was well attended and well received.

The first project progress report was received from RAND in August and distributed to the Commission members.

*The Vocational Rehabilitation Reform Project*

The primary objective of the Vocational Rehabilitation Reform Project is to help the Commission in evaluating the impact of the reform legislation on the vocational rehabilitation system.

This ongoing study, initiated in July 1995, is being conducted by the UC Berkeley Survey Research Center and a final report is expected in mid-1997.

Preliminary findings from the rehabilitation study indicate that the workload for the DWC Rehabilitation Unit may be decreasing in the years ahead. DWC made an administrative decision not to enter into the computer system those claims in which the worker is represented and there is no dispute. The number of claims requiring computer entry is expected to drop from an average of 4,000 per month in 1995 to about 1,000 per month in late 1997. Similarly, the number of computer case closures will drop from 4,000 per month to approximately 1,000 per month by the beginning of 1999.

Rehabilitation plan approvals are showing a sharp decline after peaking in 1993. This is likely due to the decline in all reported injuries after 1991 and because vocational rehabilitation plans on claims with a date of injury after January 1, 1994 that are represented by an attorney do not require approval by the DWC Rehabilitation Unit.

In contrast, the numbers of Decisions and Orders issued by the Rehabilitation Unit have increased significantly from less than 5,000 in 1991 to over 9,000 in 1995. This

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could be the result of an increase in disputes due to changes made by the 1993 reforms and/or the timing of disputes on the 1994 and 1995 injury year claims.

These preliminary findings are discussed in the Commission's 1995-96 Annual Report.

*Medical-Legal Evaluation Study*

In July 1996, the Commission released the first report from its study of the impact of the Medical/Legal reform on California's workers' compensation program. The study was conducted by the Survey Research Center at the University of California at Berkeley under contract with the Commission.

The study, based upon data from the WCIRB, found that recent reforms to the medical-legal process in the California workers' compensation system have had a dramatic impact on the costs and frequency of medical-legal examinations.

The cost of medical-legal exams on PPD claims has shown a steep decline since its peak during the 1991 accident year. For the insured community, the costs of medical-legal exams performed on PPD claims (measured at 40 months after the beginning of the accident year) has declined 86 percent from a high of \$394.5 million for the 1991 accident year to an estimated \$64.5 million for the 1994 accident year.

The average cost per exam has declined nearly 40 percent from \$987 for 1991 accident year claims to an estimated \$606 for 1994 accident year claims.

The 1989 and 1993 reforms attempted to reduce the number of medical-legal reports by forensic doctors. The survey data indicate that these efforts to deal with the "dueling docs" syndrome have been successful. The average number of exams per claim has declined by half from 2.2 for the 1991 accident year to an estimated 1.1 for the 1994 accident year. This decline is being driven by the improvement in the represented claims -- the frequency of exams on unrepresented claims has been consistently lower than represented claims and has changed little.

The study also found significant reductions in the number and cost of psychiatric medical-legal examinations. The costs of psychiatric related medical-legal exams dropped from \$93.8 million in the 1991 accident year to an estimated \$5.9 million in the 1993 accident year.

In addition, the study looked at the effect of the introduction of arbitration and mandatory settlement conferences intended to reduce the need for hearings and

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decisions and to speed the resolution of cases. Data from the WCIRB survey suggest that the new resolution mechanisms have not accomplished these goals.

These findings are further discussed in the 1995-96 Commission Annual Report.

The Medical-Legal study has been extended by the Commission for another year and a new report is expected in mid-1997.

Ms. Baker said that Commission staff have received over 300 requests to date for a copy of the Medical-Legal report, including a request from France. One report is provided to each requester at no charge and is available on the Internet as well.

*Information Services to Injured Workers project*

In August 1996, the Commission released a report from its study of the information services available to injured workers. This study examined information services provided by various governmental and private organizations designed to inform injured workers and assist them with their claims.

Conducted by the Labor Occupational Health Program at the University of California at Berkeley under contract with the Commission, the project was designed to assess the efficacy of information services currently available to the injured worker, analyze the strengths and weaknesses, and recommend ways to improve those services.

The project team worked with a volunteer project advisory committee consisting of Information and Assistance officers from the Division of Workers' Compensation, representatives from the Department of Industrial Relations, Labor union representatives, injured worker organizations, applicant and defense attorneys and employer and insurance company representatives.

The methods used to evaluate information services consisted of focus groups of injured workers, discussion groups of I & A officers, individual interviews with other participants in the system, and review of information and assistance programs in other states.

Some of the findings include:

- Workers need to know at time of employment and again at time of injury what the workers' compensation program is, what steps they need to take, what they can expect in the process, and how they can receive information and assistance.

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- Injured workers and system stakeholders both indicate that the workers' compensation system is too complex and very difficult to understand.
- Lack of coordination between state agencies and service providers in information provision appears to result in confusion and incomplete information needed by injured workers.
- Small employers may need additional information to assist them in carrying out their obligations in the complex workers' compensation system.
- Job insecurity and potential discrimination in employment are cited as major concerns of injured workers.

[**Special Note:** After some discussion, the Commission voted four to three to accept the report. However, it was later determined that the vote was invalid because any issue requires at least two labor and two employer votes to pass.]

*Incomplete Physician Report Project*

The Commission contract with UC Berkeley to study what many disability evaluators report as their largest problem, the poor quality of reports that they have to rate.

Despite the incomplete nature of these reports, it is reported that the Disability Evaluation Unit (DEU) is rating the reports, sending them out and is having them returned for re-rating. This churning results in delays and additional costs to all parties in the system.

The study being conducted by the Survey Research Center will determine the nature and magnitude of the problem, ascertain who is producing incomplete reports and why, develop quantitative analysis, provide recommendations for improving the quality of reports and calculate the cost/benefit of changing the system.

UC and Commission staff met with the Industrial Medical Council and the Disability Evaluation Unit to coordinate the process of:

- Correct sampling methods for obtaining reports from the DEU.
- Coordination with the IMC's evaluation of QME reports.
- Methods to identify the reporting physician as a QME, Treating Physician, or QME acting as a Treating Physician.

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At its July 1996 meeting, the IMC agreed to support and participate in the review process. Selected DEU disability evaluators will comment on evaluation criteria now being developed. The review of reports should begin in early October 1996.

*Workers' Compensation Prototype Information for Workers*

The Commission contracted with UC Berkeley Labor Occupational Health Program (LOHP) for the development of prototype instructional written materials and a video on the workers' compensation system.

With Commission funding, LOHP will develop 7 fact sheets in both English and Spanish designed for all workers, i.e., uninjured workers and workers who are at various stages of a claim.

Topics may include

- Introduction to Workers' Compensation
- Medical Treatment and Evaluation
- Attorney Services
- Problems and Disputes
- Settling Your Claim
- Resources, and
- Workers' Compensation for Young Workers

The instructional prototype video will provide a general introduction to workers' compensation that would be applicable to injured workers who are just entering the workers' compensation system. It will explain the basic terms, acronyms, and benefits in workers' compensation, the chronology of a typical claim, steps the injured worker should take, and available resources. The video will be accompanied by a fact sheet that will allow injured workers to retain some of the essential information shown in the video.

*Task Force on Young Worker Health and Safety*

The Commission voted unanimously to fund a statewide task force charged with coordinating strategies to protect young people from work related illness and injury.

Every year 70 adolescents die from work injuries in the U.S. 63,000 are injured severely enough to require treatment in hospital emergency rooms. Most of these injuries are preventable.

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The task force will be composed of groups and individuals dealing with California youth employment and education issues, as well as others who can play a role in educating and protecting young workers. The group will meet quarterly to accomplish the following tasks:

- Develop a resource list of task force members, listing all activities related to educating and/or protecting young workers.
- Identify ways for agencies to work together to more effectively educate and/or protect young workers.
- Develop a prioritized list of new strategies for protecting young workers, including identification of resources or agencies responsible for carrying out these strategies.

Under the Commission's direction, the Labor Occupation Health Program of UC Berkeley will organize and staff three to four task force meetings, collect additional information requested by the Task Force, and prepare and distribute the items listed above.

*Safety and Health Education Video for Young Workers*

The Commission voted unanimously to contract with UCLA Labor Occupational Safety and Health (LOSH) Program for development of a video and discussion guide on workplace health and safety aimed at adolescent workers.

In a study recently conducted by the University of California at Berkeley, researchers found that few teenagers had received any information or training about job safety at work or school. None were aware of any Injury and Illness Prevention Program at work. In general, students demonstrated a very limited understanding of the range of potential hazards in the workplace, and they had no knowledge of Cal-OSHA or where to turn if faced with a workplace health and safety problem.

UCLA-LOSH with funding from the Commission will develop a 10-15 minute video and discussion guide that can be used in the classroom to educate students how to identify health and safety hazards on their jobs and to understand their workplace rights and responsibilities under Cal-OSHA and California's child labor laws. Students and teachers will be involved in all aspects of the video project, working with a professional video producer to design, produce and evaluate the video.

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The video will be accompanied by a discussion guide and will be used by ninth grade teachers in their Education and Career Planning and Integrated Social Studies classes which all ninth graders must take. It will also be used in classes such as social studies, English, health, history and vocational education. The video and guide will be distributed at no cost to all 49 high schools in the Los Angeles Unified School District. The video and accompanying discussion guide will be made available to other school districts upon request.

***Grant Program***

The Commission on Health and Safety and Workers' Compensation reviews and approves proposals for grant funds to assist in establishing effective illness and injury prevention programs (IIPP) as mandated by Labor Code Section 6401.7.

Ms. Baker reported that the 1994 grant projects are wrapping up.

Four of the nine grant recipients have submitted their final projects (Bay Counties District Council of Carpenters, San Mateo County Risk Management, Los Angeles Unified School District, and Oil, Chemical, and Atomic Workers Union). Of these four, three have also completed all required reports and their files have been closed. We are awaiting the final financial report for San Mateo County Risk Management.

The remaining five grantees are in the final stages of completion and several have requested and have been granted extensions. Commission staff are in close contact with the grant recipients and all projects are reported to be progressing smoothly with final reports and/or projects expected shortly. A detailed status report of the 1994 grants has been distributed to the Commission members.

To date, \$160,851 in unused grant moneys has been identified as refundable to the Commission. Of this amount \$118,967.87 has been collected and deposited in Fund 222. Commission staff are continuing to contact grant recipients requesting further refunds or explanation of expenditures.

***Internet***

*Health and Safety and Workers' Compensation Training courses*

The Commission has developed and is maintaining a comprehensive curriculum of health and safety and workers' compensation classes available to the public on the Internet. This service provides the name of the college or university, information on degree and certification programs, course names and descriptions,



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schedule of classes, tuition costs (if any), and referrals and/or instructions on how to obtain additional information. The data base is updated periodically to incorporate additions to and changes in classes and schedules.

*Commission Information*

Ms. Baker said that other information about the Commission is on the Internet, including notices of meetings, study reports, the Commission's Annual Reports, and information about the Commission members.

Chairman Rankin congratulated Ms. Baker on the development of the Internet website.

**Public Comments**

There were no comments from the public.

**Other Business**

Commissioner McLeod suggested that the Commission develop an issue paper with recommendations regarding industrial disability retirement determinations for Correctional Peace Officers. Chairman Rankin recommended that the Commission members review all the potential projects and then discuss them and make decisions at the next meeting in November.

Commissioner McLeod asked Mr. Young if he had ever considered asking injured workers if they were satisfied with their treating physicians, much as Walmart asks their customers if they are satisfied. Mr. Young said he thought it was a good idea.

Commissioner McLeod suggested that some kind of survey or form might be developed for the injured worker to fill out before he leaves the office. Commissioner O'Hara concurred. Mr. Young said he would start looking at that and talking to some people.

Commissioner Rankin wanted to make it clear that the Commission will be meeting with Mr. Young to assure that the Commission and DWC will work together on the information prototype project.

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**Next Meeting**

The next meeting of the Commission will be held at 10 am on Friday, November 8, 1996 at the State Building, 1350 Front Street, San Diego in Auditorium B-109.

**Adjournment**

Commissioner McLeod moved to adjourn, Commissioner Steinberg seconded, and the motion passed unanimously.

The meeting was adjourned at 12:37 p.m.

Approved:

Respectfully submitted,

\_\_\_\_\_  
Tom Rankin, Chairman      Date

\_\_\_\_\_  
Christine Baker, Executive Officer